

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**2900 Crystal Drive**  
**Arlington, Virginia 22202-3514**

Mailed: 4/30/04

Opposition Nos. 91157206  
91159478

Toyota Jidosha Kabushiki Kaisha,  
t/a Toyota Motor Corporation and  
Toyota Motor Sales, U.S.A., Inc.

v.

Syngenta Participations AG

Linda Skoro, Interlocutory Attorney

This case now comes up on several motions: (1) opposer's motion, filed December 8, 2003, to consolidate the proceedings; (2) applicant's motion, filed October 22, 2003, to compel discovery; (3) opposer's motion to compel and (4) opposer's motion for extension of time to respond to discovery in opposition 91159478. Both parties have opposed the other party's motions. The objections range from failure to make a good faith effort to resolve the discovery dispute, to misplaced requests and timeliness. Applicant also opposes the motion to consolidate. We turn to that motion first.

Motion to Consolidate

A review of the pleadings in the above-identified opposition proceedings indicates that the parties are the same, the marks are the same, and the proceedings involve substantially identical questions of fact and law.

Since the marks being opposed are substantially the same, and inasmuch as the respective plaintiffs have in each instance challenged the right of the other party to registration, it is believed that these proceedings may be presented on the same record without appreciable inconvenience or confusion. Moreover, the consolidation would be equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and the extra expense involved in conducting the proceedings individually, as noted by opposer's motion for an extension of time filed in 91159578 alleging an identity of the discovery requests. See Rule 42(a) of the Federal Rules of Civil Procedure.

The consolidated cases may be presented on the same record and briefs. See, *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). As a general rule, from this point on only a single copy of any paper or motion should be filed herein, but that copy should bear all proceeding numbers in its caption. Exceptions to the general rule of one copy involve stipulated extensions of

**Opposition Nos. 91157206 & 91159578**

the discovery and trial dates and briefs on the case, which require additional copies. See Trademark Rules 2.121(d) and 2.128.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the decision shall be placed in each proceeding file.

The parties are further advised that they are to periodically inform the Board if any subsequent oppositions or cancellations are instituted which involve the same parties and the same issues.

Cross Motions to Compel

A review of the filings in this proceeding reveals that applicant's motion to compel was indeed filed prior to making a good faith effort to resolve the matters. However, the same is true of opposer's motion. As the filings in the proceeding are read, it is clear that the parties had actually agreed that both needed an extension of time to respond to the other's requests, but then were unable to agree as to how much time that would be. This fact, combined with the fact that these motions have been pending for a considerable period of time, gives the Board hope that

the parties have finally reached agreement on how they would like to proceed to be able to bring this matter to a close.

In the event that the parties have not had ample time to search their records and properly produce all responsive documents, the parties are reminded that discovery in proceedings before the Board is not governed by any concept of priority of discovery or disposition as may exist under the rules of practice of some state or local courts. Rather, a party is under an obligation to respond to an adversary's requests for discovery during the time allowed therefore under the applicable rules, irrespective of the sequence of discovery, or of an adversary's failure to provide discovery. *See, Miss American Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067 (TTAB 1990). The Board expects parties and their attorneys to cooperate with one another in the discovery process, and looks with extreme disfavor upon those who do not. Further, a party has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed, not to unilaterally state it is providing representative samples. Both parties are further reminded of their duty to supplement discovery responses in proceedings before the Board. *See Fed. R. Civ. P. 26(e)(2).*

It is clear from the fact that neither party has produced anything, that the parties have failed to properly cooperate with one another in the discovery process, and, more specifically, have failed to make a substantive effort to resolve by agreement the issues raised by the motions before coming to the Board. See Trademark Rule 2.120(e). While generally such a failure would result in the denial of a motion to compel, because, in this case, both parties here are responsible, and given the delay occasioned by the Board's inability to timely address these matters, all motions to compel are hereby granted.

The parties have **THIRTY DAYS** from the mailing date of this order to work out their differences, including executing any protective agreement which needs to be put in place; and updating and producing all requested discovery, without any further objections. In order to accomplish these goals, opposer's motion to extend time is granted.

Proceedings are resumed and trial dates are reset as indicated below.

**IN EACH INSTANCE**, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. Rule 2.125.

**Proceedings Resume:**

**5/1/2004**

**DISCOVERY PERIOD TO OPEN:**

**5/21/2004**

**DISCOVERY PERIOD TO CLOSE: 11/17/2004**

Thirty-day testimony period for party in position of plaintiff to close: **2/15/2005**

Thirty-day testimony period for party in position of defendant to close: **4/16/2005**

Fifteen –day rebuttal testimony period to close: **5/31/2005**

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

.oOo.